

## **FLORIDA CWA 404 ASSUMPTION REQUEST**

### **BACKGROUND:**

- Michigan and New Jersey are currently the only states that administer the Section 404 program. States and tribes have cited various reasons for not assuming the CWA Section 404 program including lack of dedicated federal funding, inconsistency between state and federal authorities, lack of partial assumption authority, and lack of clarity on which waters of the U.S. the Army Corps of Engineers (Corps) retains.
- In 2018, the EPA announced it would clarify the regulations addressing the requirements and process for states and tribes to assume the CWA Section 404 dredged and fill permitting program.
  - In July 2018, the Assistant Secretary of the Army for Civil Works issued a memorandum to the Corps clarifying which waters states and tribes may assume.
  - Between October 2018 and January 2019, the EPA held early input sessions with states and consulted with tribes on what should be clarified in the regulatory revision.

### **KEY POINTS:**

- EPA is actively working with Florida, due to their expressed interest in assuming the program.
- How state programs and permits are treated under the Endangered Species Act (ESA) has been an obstacle to states and tribes assuming the 404 program. The EPA is working with Florida and other states on addressing ESA considerations in program assumption and the Agency has identified Florida as a designated federal representative to work with the Departments of Interior and Commerce on initial consultation issues.
- EPA continues to assist Florida with understanding the federal requirements for 404 assumption and is communicating with them regularly regarding their development of a 404 program.
- The EPA has not yet seen/reviewed, in final or draft, several components of what Florida will ultimately need to submit as part of a complete assumption package.
- Key outstanding issues include: (1) the uncertainty of whether there may be potential issues associated with components of Florida's assumption package that we have not yet seen/reviewed; (2) the completion of ESA consultation; (3) the completion of Florida's rulemaking process; (4) the review of Florida's enforcement authorities; (5) the finalization of Florida's Memorandum of Agreement (MOA) with the Corps, including the final list of retained waters; and (6) potential interest by Florida to delay the effective date of their administration of the program.

### **TALKING POINTS:**

- EPA continues to actively support the State of Florida's efforts towards Assumption of the permitting program under Section 404 of the CWA.
- On August 4, 2020, EPA and Florida signed a MOA representing the next step, and one of several required elements, for Florida to assume responsibility for issuing certain CWA permits. The state intends to include the MOA in its formal request to EPA for authorization to administer the CWA Section 404 program.
- If the State were to assume the program, it would provide them the authority to make reasonable and timely decisions related to Florida's water resources and needs. If Florida submits an assumption package, EPA will work with Florida and other stakeholders to complete the review and consultation process set forth in our regulations.
- By empowering the State to take on this permitting responsibility, we can achieve greater efficiencies in infrastructure and other permitting decisions while continuing to protect the environment.